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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,546	02/16/2001	Sonya Franklin	875.037US1	5198
21186	7590	02/02/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			PATTERSON, CHARLES L JR	
			ART UNIT	PAPER NUMBER
			1652	
DATE MAILED: 02/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/785,546

Applicant(s)

FRANKLIN, SONYA

Examiner

Charles L. Patterson, Jr.

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1, 2, 4-18, 27-29 and 34.

Claim(s) withdrawn from consideration: 3, 19-26 and 30-33.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Charles L. Patterson, Jr.
Primary Examiner
Art Unit: 1652

Continuation of 2. NOTE: Applicants add another sequence in new claim 35 that was apparently not pending and may be new matter. The objection to the specification stated that there are only 9 lines on page 48, whereas the amendment of 7/6/04 states that line 21 of page 48 is to be amended. The addition to claim 1 would apparently require more than nominal further consideration.

Continuation of 5. does NOT place the application in condition for allowance because: In the declaration the similarity of elected peptides and non-elected peptides are stated to be "similar" or "related" and it is stated that "CM1 is also structurally related to... C2 a synthetic peptide that binds lanthanides and calcium" It is further stated that EuC2 caused cleavage, referring to Figure 1 in the declaration. This is apparently new matter. At the very least to consider this data would require more than nominal further consideration. In arguing for rejoinder of all of the claims, applicants argue that the peptides are "similar", have similar motifs and are "related" at the primary amino acid level. As stated in the original restriction requirement, these peptides have different structures and are therefore patentably distinct. The examiner was only considering rejoining claims related to the nucleic acid, as stated in the last action, and should have stated that these claims were 19-25, 27-29, not 19-25, 30 and 31 as mistakenly stated in the action.